IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2779 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R VISHWAMBHARAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2779 of 1992

MRS KETTY A MEHTA for Petitioner No. 1

MR ND GOHIL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 01/11/2004

ORAL JUDGEMENT

In this petition, the petitioner had challenged rule V of the Gujarat Government Servants (Lower Standard and Higher Standard Gujarati Language Examination) Rules

1970 as being illegal and ultra vires the Constitution. It was consequently prayed for a declaration that the petitioner is not required to pass the higher standard Gujarati language examination under the provisions of the said Rules and also prayed that the respondents be directed not to stop the increments of the petitioner on the ground that he has not passed the higher standard Gujarati language examination.

2. By introduction of the said Rules, the Government had required the petitioner and other Stenographers to pass higher standard Gujarati language examination before they could claim benefits of increments. The petitioner had, therefore, challenged the validity of the said rule.

3. During the pendency of the petition, the petitioner had filed Civil Application No.1784 of 1994 in which this Court had granted interim relief in terms of para 5(A) of the Civil Application on the condition that the petitioner shall file an undertaking before the High Court stating that in case of failure in the petition, he shall repay the amount received by way of increments within six weeks from the date of the decision which may be rendered in the main matter. Effectively, therefore, by granting the said interim relief, the High Court had ordered the respondents to release the increments of the petitioner which were otherwise withheld on account of his failure to pass higher standard Gujarati language examination subject to the above condition of refunding the amount in case the petition is ultimately decided against the petitioner.

4. Today when the matter is called out, learned advocate for the petitioner has made available an order dated 24th March, 2000, passed by the learned single Judge of this High Court in Special Civil Application No.3667 of 1987, in which in identical circumstances, when rule V of the said Rules was challenged by the petitioner therein, relying upon earlier order of this Court, the High Court had provided that if the petitioner has not already passed Gujarati language examination under the said Rules, he shall do so within a period of three years from the date of the order and if he does not pass the said examination within the said time, the respondents shall be at liberty to recover the amount of increments which the petitioner has received.

5. The learned advocate for the petitioner submits that the factual background of the present petition is also similar and the petitioner would ordinarily have been entitled to receive the same treatment. She,

however, points out that during the pendency of the petition, petitioner has already superannuated nearly two years back. She, therefore, submits that it would now be harsh and meaningless to make the petitioner to go through the rigours of passing of the examination at such a belated stage. The learned AGP appearing for the respondents does not seriously dispute that the facts of the present case are similar to those arising in Special Civil Application No.3667 of 1987.

6. Ordinarily, this Court would have adopted the same formula in the present case as was done earlier by this Court in the decision dated 24th March 2000 in Special Civil Application No.3667/87. In the present case, however, during the pendency of the petition, the petitioner has already retired and it would, therefore, not be proper to expect the petitioner to pass the examination in question long after his retirement. In the peculiar facts of the case, therefore, it would not be just to insist that the petitioner appears and passes the examination of higher standard Gujarati language examination envisaged under the Rules.

7. In the result, therefore, in the facts of the case, it is provided that the increments already released in favour of the petitioner shall not be recovered and the necessity of passing higher standard Gujarati language examination shall not be insisted upon against the petitioner. With these directions, the petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)